

**STATE OF CALIFORNIA  
DEPARTMENT OF INSURANCE  
45 Fremont Street, 21st Floor  
San Francisco, CA 94105**

**File No. RH04034833**

**Date: September 11, 2006**

**Regulations Re: Workers' Compensation Fraud**

**NOTICE OF PROPOSED REGULATORY ACTION**

**SUBJECT OF PROPOSED REGULATORY ACTION:**

The Insurance Commissioner proposes to adopt on a permanent basis the emergency regulations described below after considering comments from the public. Specifically, the Commissioner proposes to adopt as permanent regulations the emergency regulations presently in effect that are set forth at California Code of Regulations, Title 10, Chapter 5, Subsections 2698.52(c), 2698.53(b) and 2698.56(c).

**AUTHORITY AND REFERENCE:**

The Insurance Commissioner proposes to adopt the subject regulations under the authority of California Insurance Code Section 1872.83(g). These regulations are intended to implement California Insurance Code Section 1872.83(g). Therefore, the appropriate reference citation for these regulations is California Insurance Code Section 1872.83(g).

**HEARING DATE, TIME AND LOCATION:**

**Date: November 8, 2006  
Time: 10:00 A.M.-4:00 P.M.  
Location: California Department of Insurance  
45 Fremont Street, 22<sup>nd</sup> Floor  
Administrative Law Bureau-Hearing Room  
San Francisco, CA 94105**

**PRESENTATION OF WRITTEN AND/OR ORAL COMMENTS; CONTACT PERSONS:**

Debra A. Chaum, Senior Staff Counsel  
California Department of Insurance, Legal Division  
45 Fremont Street, 21<sup>st</sup> Floor  
San Francisco, CA 94105  
Telephone: (415) 538-4115  
[chaumd@insurance.ca.gov](mailto:chaumd@insurance.ca.gov)

**DEADLINE FOR WRITTEN COMMENTS:**

All written materials [including e-mail transmissions] must be received by the Insurance Commissioner, addressed to the contact person and address designated above, no later than 5:00 p.m. on November 8, 2006. Any written materials received after that time will not be considered.

**COMMENTS TRANSMITTED BY E-MAIL OR FACSIMILE:**

The Commissioner will accept written comments transmitted by e-mail provided that they are sent to the following e-mail address: [chaumd@insurance.ca.gov](mailto:chaumd@insurance.ca.gov).

**ACCESS TO HEARING ROOMS:**

Please contact the contact person designated above.

**INFORMATIVE DIGEST:**

**Summary of Existing Law and Policy Statement Overview:**

California Insurance Code Section 1872.83(a) provides, in part, that the Insurance Commissioner shall ensure that the Fraud Division aggressively pursues all reported instances of probable workers' compensation fraud. California Insurance Code Section 1872.83(b) provides that for the purpose of funding the pursuit of all probable instances of insurance fraud, there shall be annual assessment. California Insurance Code Sections 1872.83(d) sets forth that after incidental expenses, at least 40 percent of the funds assessed pursuant to this statute shall be provided to the Fraud Division for enhanced investigative efforts. The Commissioner initially promulgated and adopted regulations pursuant to the above described statutory sections in 1993. These regulations are set forth at California Code of Regulations Title 10, Chapter 5, Subchapter 9, and Sections 2698.50-59.

After studying the effectiveness of these regulations, the Commissioner determined that certain subsections of the regulations needed to be amended in order to increase the efficiency of the process. Accordingly, pursuant to the statutory authority conferred upon him by California Insurance Code Section 1872.83(g), on March 3, 2006 the

Commissioner adopted emergency regulations which amended Subsections 2698.52(c), 2698.53(c) and 2698.56(c). The Commissioner re-adopted these regulations on July 28, 2006. It is now the Commissioner's intention to adopt these regulations pursuant to the regular rulemaking process as outlined in the California Government Code so that they will be permanent regulations. The text of the proposed regulations is identical to that of the existent emergency regulations. The specific purpose of each adoption, and the rationale for the determination that each adoption is reasonably necessary to carry out the purpose for which it is proposed, together with a description of the public problem, administrative requirement, or other condition or circumstance that each adoption is intended to address, is set forth below. The regulations proposed herein would do the following:

1. Eliminate the five percent reserve requirement imposed by Title 10, Subsection 2698.52(c);
2. Eliminate the semi-annual distribution of grant funding specified in Title 10, Subsection 2698.53(b) and replace it with the requirement of annual funding in July;
3. Eliminate the accounting method known as Federal OMB Circular A-87 from the list of accounting methodologies that a county (district attorney) may use in calculating indirect costs for use in grant applications as specified in Title 10, Subsection 2698.56(c).

#### **EFFECTS OF PROPOSED ACTION:**

The major effects of the regulations are as follows:

##### **Proposed California Code of Regulations Subsection 2698.52(c)**

The text of the emergency regulation at subsection 2698.52(c) has been adopted. The subsection (as originally drafted prior to the emergency regulations) required the Department to reserve five percent of the funds to be granted. This subsection has been amended to eliminate the entire second and third sentences of the subsection so that the requirement that the Department of Insurance hold five percent of the grant in reserve is eliminated. The county that is the recipient of the grant has access to the entire amount of the grant rather than having to wait to receive the additional five percent of the grant at a later time. The Commissioner has modified the grant application and distribution process and amended the California Code of Regulations to specify and clarify this change in the grant application and distribution procedure.

##### **Proposed California Code of Regulations Section 2698.53(b)**

The text of the emergency regulation at subsection 2698.53(b) has been adopted. This subsection (as originally drafted prior to these emergency regulations) has been amended to eliminate the semi-annual distribution of grant funding specified in Title 10, Subsection 2698.53 (b); as amended the subsection imposes the requirement of annual funding in July. The Commissioner has modified the grant application and distribution

process to make the process simpler and more efficient and has amended the California Code of Regulations to specify and clarify this change in the grant application and distribution procedure.

### **Proposed California Code of Regulations 2698.56(c)**

The text of the emergency regulation at subsection 2698.56(c) has been adopted. This subsection (as originally drafted prior to these emergency regulations) has been amended to eliminate the accounting method known as Federal OMB Circular A-87 from the list of accounting methodologies that district attorneys ( a county) may use in calculating indirect costs for use in grant applications as specified in Title 10, 2698.56(c). The Commissioner has modified the grant application and distribution process to make the process simpler and more efficient and has amended the California Code of Regulations to specify and clarify this change in the grant application and distribution procedure.

### **MANDATES:**

These regulations do not impose any mandate on local agencies or school districts. There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement.

### **COST OR SAVINGS TO STATE/LOCAL AGENCY OR SCHOOL DISTRICT OR IN FEDERAL FUNDING:**

The Commissioner has made an initial determination that the proposed regulations will result in no cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, no other nondiscretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State.

### **ECONOMIC IMPACT ON BUSINESSES AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE:**

The Commissioner has made an initial determination that the proposed regulations may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. As described above, certain previously exempt insurers will for the first time be required to perform asset adequacy analysis as part of the actuarial opinion and memorandum they must prepare each year. The types of businesses that may be affected are life insurers, reinsurers and fraternal benefit societies. The Commissioner has not considered proposed alternatives that would lessen any adverse economic impact on business and invites interested parties to submit proposals. Submissions may include the following considerations:

(i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.

(ii) Consolidation or simplification of compliance and reporting requirements for businesses.

(iii) The use of performance standards rather than prescriptive standards.

(iv) Exemption or partial exemption from the regulatory requirements for businesses.

**POTENTIAL COST IMPACT ON PRIVATE PERSONS OR ENTITIES/  
BUSINESSES:**

The Commissioner is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action..

**FINDING OF NECESSITY:**

The Commissioner finds that it is necessary for the welfare of the people of the state that the regulations apply to businesses.

**EFFECT ON JOBS AND BUSINESSES IN CALIFORNIA:**

The Commissioner is required to assess any impact the regulations may have on the creation or elimination of jobs in the State of California, the creation of new businesses, the elimination of new businesses, and the expansion of businesses currently operating in the state. The Commissioner has determined that the proposed regulations will no impact on any of the above.

**IMPACT ON HOUSING COSTS:**

The Commissioner has determined that the matters proposed herein will have no effect on housing costs.

**ALTERNATIVES:**

The Commissioner must determine that no reasonable alternative considered by the Commissioner or that has otherwise been identified and brought to the attention of the Commissioner would be more effective in carrying out the purposes for which the regulations are imposed or would be as effective as and less burdensome to affected private persons than the proposed regulations. The Commissioner invites public comment on alternatives to the regulations.

**IMPACT ON SMALL BUSINESS:**

The Commissioner has determined that small businesses should not incur additional expenses as a result of these regulations because these regulations do not impose any requirements or have any impact on small business as defined by the California Government Code. These regulations solely impose requirements on district attorneys and insurers, neither of these groups fall within the definition of small business.

### **COMPARABLE FEDERAL LAW:**

There are no existing federal regulations or statutes comparable to the proposed regulations.

### **TEXT OF REGULATIONS AND INITIAL STATEMENT OF REASONS:**

The Department has prepared an initial statement of reasons that sets forth the reasons for the proposed adoption of the regulations. Upon request, the initial statement of reasons will be made available for inspection and copying. Written requests for the initial statement of reasons or questions regarding this proceeding should be directed to the contact person listed above. Upon request, the final statement of reasons will be made available for inspection and copying once it has been prepared. Written requests for the final statement of reasons should be directed to the contact person listed above.

The file for this proceeding, which includes a copy of the proposed regulations, the statement of reasons, the information upon which the proposed action is based, and any supplemental information, including any reports, documentation and other materials related to the proposed action that is contained in the rulemaking file, is available for inspection and copying at 45 Fremont Street, 21st Floor, San Francisco, California 94105, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday.

### **AUTOMATIC MAILING:**

A copy of this notice, including the informative digest, which contains the general substance of the proposed regulations, will automatically be sent to all persons on the Insurance Commissioner's mailing list.

### **WEBSITE POSTINGS:**

Documents concerning this proceeding are available on the Department's website. To access them, go to <http://www.insurance.ca.gov>. Find, near at the top of the leftmost column, the pull down menu under the heading "Quick Links." Select the "Legal Information" link. On the "Legal Information" page, click on the "Proposed Regulations" link. When the 'Search or Browse for Documents for Proposed Regulations' screen appears, you may choose to find the documents either by conducting a search or by browsing for them by name.

To search enter "File No. RHO6090982" (the Department's regulation file number for these regulations) in the search field. Alternatively, search using as your search term the section number of a code section that the regulations implement. [For instance "California Insurance Code Section 1872.83"]. Search by keyword ["WORKERS' COMPENSATION FRAUD"]. Then, click on the 'Submit' button to display links to the various filing documents. To browse, click on the 'Browse All Regulations' button near the bottom of the screen. A list of the names of regulations for which documents are posted will appear. Find in the list the WORKERS' COMPENSATION FRAUD link,

and click it. Links to the documents associated with these regulations will then be displayed.

**MODIFIED LANGUAGE:**

If the regulations adopted by the Department differ but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Interested persons should request a copy of these regulations prior to adoption from the contact person listed above.

Dated:

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DEBRA A. CHAUM  
Senior Staff Counsel